

E-IMAGEDATA CORP.,	)	
	)	Case No. 15-cv-00658-RTR
Plaintiff,	)	
	)	
v.	)	
	)	
DIGITAL CHECK CORP.	)	
d/b/a ST Imaging,	)	
	)	
Defendant.	)	

Jon W. Tepp  
March 24, 2017

EXHIBIT EE

## **Expert Report of Jon W. Tepp**

### **Qualifications**

1. My name is Jon Tepp. I am a Senior Economist at Christensen Associates, an economic research and consulting firm located in Madison, Wisconsin. I have been employed at Christensen Associates since 1998. Throughout my tenure at Christensen Associates, my primary responsibilities have been related to the measurement of economic phenomena in litigation—primarily the calculation of lost profits and other forms of damages. I have been retained as a consulting expert to analyze financial data and accounting records both in litigation matters and outside the context of litigation. I have authored reports regarding the measurement of damages and valuation of intellectual property. I have assisted in the calculation of damages in numerous cases related to breach of contract, patent infringement, wrongful death, price fixing, and other causes of action. I have also constructed and implemented surveys for litigation and non-litigation purposes. I earned a Bachelor of Science degree in Economics from the University of Wisconsin–Stevens Point in 1995. A copy of my resume is included as Appendix A. A list of the cases in which I have testified at deposition or trial during the preceding four years is attached as Appendix B. A list of the documents which I have received in this case appears as Appendix C. Christensen Associates charges a rate of \$250 per hour for my services in this case, plus expenses. Christensen Associates' compensation is not dependent upon the outcome of this case.

### **Introduction**

2. I have been retained by e-ImageData Corp. (e-Image) through its counsel, Quarles and Brady LLP, to calculate damages from allegations found in the Second Amended Complaint

dated December 1, 2015 (the Complaint) against Digital Check Corp. d/b/a ST Imaging (ST Imaging).<sup>1</sup> I am not offering any opinions regarding the technical accuracy of the false statements e-Image alleges were made by ST Imaging. For purposes of my analyses, I have assumed that e-Image's allegations are valid.

3. My opinions are based on the information currently available, and I understand that discovery is ongoing. If additional information becomes available, I reserve the right to consider this information and its effect, if any, on my opinions and to supplement my report as needed. For example, I understand that ST Imaging reseller Servicestar provided deposition testimony through Putnam Morgan on March 21, 2017 related to many of the topics discussed in my report, but the deposition transcript is not yet available. I expect to review and supplement this report with consideration of Mr. Morgan's relevant testimony and discussion of exhibits. Also, ST Imaging's sales data produced in this matter run through September 2016—when additional sales data are produced, I expect to update my calculations at that time.<sup>2</sup> I expect to testify at trial and may use summaries of my opinions, analyses, and tables, and/or documents and deposition testimony in this case as demonstrative exhibits.

### **Summary of Opinions**

4. In my opinion, e-Image's damages from ST Imaging's alleged false statements should be measured by disgorgement of ST Imaging's unjust enrichment from its accused sales

---

<sup>1</sup> Specifically, I understand Plaintiff e-Image is seeking damages under the Lanham Act for Defendant's alleged dissemination of marketing materials and statements containing false and misleading information about ST Imaging's ViewScan products and e-Image's ScanPro products in violation of 15 U.S.C. § 1125(a). See Complaint, pp. 10-11.

<sup>2</sup> For example, see Philip Reid (counsel for Defendant), email to David Muth and Johanna Wilbert (counsel for Plaintiff), October 13, 2016.

of ViewScan products. ST Imaging's ViewScan product revenues total [REDACTED] from April 2010 to September 2016. See Table 1.

5. ST Imaging's accused ViewScan revenues from the timeframe in which it allegedly made false statements regarding its ViewScan products being UL certified total approximately [REDACTED].<sup>3</sup> Accused ViewScan revenues during the period ST Imaging allegedly made false statements related to optical zoom magnification totaled at least \$[REDACTED].<sup>4</sup> ST Imaging has earned accused net revenues of approximately [REDACTED] during the period it allegedly made false statements regarding the e-Image ScanPro's 26-megapixel camera and/or claims its ViewScan products had a 26-megapixel (or more) camera/image.<sup>5</sup>

## Background

### *e-Image and its ScanPro Products*

6. Plaintiff e-Image is a Wisconsin corporation headquartered in Hartford, Wisconsin.<sup>6</sup> e-Image is a manufacturer of digital microfilm scanning systems and is the owner of several related patents.<sup>7</sup> According to the e-Image website,

We have been in business since 1989. Today, e-Image Data is the industry leader in the design, manufacture, marketing, sales, and distribution of micrographic equipment. Today, our products are produced under the ScanPro® brand and shipped worldwide to customers that use microfilm.<sup>8</sup>

---

<sup>3</sup> Table 1.

<sup>4</sup> Table 1.

<sup>5</sup> Table 1.

<sup>6</sup> For example, see Second Amended Complaint, December 1, 2015, p. 1.

<sup>7</sup> For example, see Second Amended Complaint, December 1, 2015, p. 1; U.S. Patent No. 8,537,279; U.S. Patent No. 9,179,019; and U.S. Patent No. 9,197,766.

<sup>8</sup> [http://www.e-imagedata.com/About\\_Us.html](http://www.e-imagedata.com/About_Us.html), viewed February 24, 2017.